IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.699 OF 2003

Ravindra Bhikaji Solase]
Age 21 years, Occu:Labourer]
R/o shivur, Tal.Vaijapur,]
Dist.Aurangabad,]
At present resident at : Manchar]
Tq.Ghodegaon, Dist.Pune]
At present in Yerwada Central] Appellant
Jail Pune, Dist.Pune.](Org.Accused)

versus

The State of Maharashtra] Respondent.

None for the appellant.
Mr.P.S.Hingorani for the respondent/State.

CORAM : D.G.DESHPANDE
SMT.NISHITA MHATRE, JJ.
DATED : MARCH 20, 2007.

JUDGMENT : [PER D.G.DESHPANDE,J]

1. This matter was on board on 15th March 2007. At that time nobody was appeared for the accused, even though as per the record, Advocates Mr.A.P.Gunge and Mr.M.D.Shinde are representing the accused. Therefore, we adjourned the matter today. Today also nobody appears for the accused. Hence on the basis of judgment of the Supreme Court reported in **1996 Cr.L.J.3491 (Bani Singh & ors. v/s. State of U.P.),** We heard the learned APP Mr.Hingorani for the State.

2. This appeal is filed by original accused Ravindra challenging his conviction under Sections 323, 506 and 302 of the Indian Penal Code by which he was sentenced to suffer imprisonment for life. No separate sentence appears to have been awarded to him under Sections 323 and 506 of the Indian Penal Code.

3. The case of the prosecution was that the accused killed his wife Sandhya. She was the daughter of P.W.1 Vasant Khairnar from his first wife. Sandhya married to the accused on

17.5.1998. After marriage she resided with accused at his native place. For Dipawali of 1999, P.W.1 Vasant brought her at Manchar. On 5.11.1999 the accused also came to Manchar. The incident took place on 6.11.1999. On that day P.W.1 Vasant had gone to Pune for Bazar. The incident took place at 11.30 a.m. At that time Sandhya's mother, who was actually the stepmother, was washing clothes in front of the house. Her younger sisters and brother were playing there. At that time, the accused came from outside after consuming liquor and insisted Sandhya to return with him to Shivur. Sandhya asked him to allow her to stay with her parents for Dipawali festival. The accused got annoyed and gave fist blows on the chest of Sandhya, abused her and set fire to her nylon sari by matchstick. When Sandhya tried to extinguish fire, the accused lifted a Kerosene can and sprinkled kerosene on Sandhya. Sandhya shouted and her brother, mother and sisters rushed. Her mother Mandabai covered Sandhya with quilt and extinguished fire. But in the mean time the accused ran away from the spot. Sandhya was first taken to Ghodegaon by her stepmother and then to Sassoon hospital at Pune. Her first

dying declaration was recorded on that day by the Special Executive Magistrate wherein she gave story that due to bursting of stove, she caught fire. After six days i.e. on 12.11.1999 Sandhya told resident doctor that she wants to change her earlier statement. The doctor informed this fact to R.M.O. who informed it to the police. Then Special Executive Magistrate Sharad Joshi was deputed to record the second dying declaration of Sandhya. Immediately thereafter head constable Nalawade also recorded statement of Sandhya and then F.I.R. was registered. The trial Court believed the two subsequent dying declarations and other evidence of the prosecution and convicted the accused, as stated above and hence this appeal.

4. From the grounds raised in the memo of appeal it appears that when in the first dying declaration Sandhya had exonerated the accused and given the history of accidental fire, then the trial Court was not justified in relying upon the subsequent dying declarations which implicate the accused and, therefore, implication of accused in the second dying declaration was motivated. Secondly all the witnesses were

highly interested and, therefore, their evidence was liable to be disbelieved.

5. We do not find any reason to interfere with the order of conviction. Sandhya was married on 17.5.1998. Diwali of 1999 was perhaps the 2nd Diwali after her marriage. It is an usual practice that the married girls are invited by their parents with son-in-laws for Diwali. Therefore, Sandhya came to her parents house in the year 1999 for Diwali along with her husband. About happenings on the day of incident, the evidence of stepmother and father of Sandhya is important and was rightly accepted by the trial Court.

6. P.W.1 Vasant Ananda Khairnar - the father of Sandhya, states that Sandhya married on 17.5.1998. The accused was not doing any work. At the time of her marriage, Sandhya was having good health, but subsequently her health started deteriorating. The parents used to ask her about her health but except weeping she did not tell anything. Then Sandhya came for Diwali in 1999. On 5.11.1999, the accused also came at Manchar

where Sandhya's parents were residing. On that day in the evening the accused consumed liquor and stayed with them. He was addicted to liquor. P.W.1 Vasant further stated that on the next day he (PW 1) went to Pune for purchasing clothes for Diwali and when he returned to Manchar in the evening, he found nobody in the home. On enquiry, he learnt that Sandhya was burnt and she was taken to Sassoon Hospital, Pune. Therefore, he went to Sassoon Hospital, Pune and met Sandhya. But she was not in a position to talk. When on the next day Sandhya regained conciseness, she told him that on the day of incident in the morning at about 10 a.m. accused insisted her to return to Shivur. She told the accused that her father had gone to Pune and, therefore, it will not be proper behind his back to go to Shivur. Sandhya further told P.W.1 that thereafter after some time accused returned back by consuming liquor. He gave her severe beating and lit the match stick to her sari. When Sandhya tried to extinguish fire, the accused poured kerosene on her and then he left the house. She also told her father (PW 1) about her first dying declaration to the Magistrate and explained that she had given that statement

because of the threat given by the accused. Nothing fruitful was brought out from his cross examination. P.W.1 stated in his cross examination that Sandhya had burns injuries right from head to feet. He admitted that he had given a telegram to the father of accused that Sandhya was not keeping well and upon receipt of the telegram, the maternal aunt of the accused had come to the hospital. This telegram does not mean that P.W.1 was changing his stand from accidental to homicidal death. Sending such telegram was most natural on the part of P.W.1.

7. The prosecution has examined P.W.2 Manda Dattatraya Nehare. But there were many improvements and omissions in her story, therefore, her evidence cannot be accepted.

8. The next witness examined by the prosecution is the stepmother of Sandhya. She is P.W.3 - Manda Vasant Khairnar. She has stated that 2/3 days before the incident, her husband (PW 1) Vasant brought Sandhya at Manchar for Dipawali. A day before the incident, the accused also came there. But he gave severe beating to Sandhya on that day. On the next day morning at

about 10.30 a.m., i.e. on the day of incident, P.W.1 Vasant left Manchar for Pune. The witness stated that her children were playing and she was washing the clothes in front of the house. At that time, she heard cries from the house, therefore, she rushed inside the house and found that Sandhya was set on fire and accused ran away from the house. Thereafter Sandhya was admitting, in the course of time, to Sassoon Hospital, Pune. Certain omissions regarding non-disclosure of beating on the earlier day was brought on record. But they do not matter much because they are of minor nature.

9. P.W.3 is supported by P.W.4 - Vidhya Vasant Khairnar, who is the daughter of P.W.1 Vasant and P.W.3 Manda.

10. The most important evidence relied upon by the trial Court is the subsequent dying declarations. It is true that in the first dying declaration, recorded by the S.E.M., Sandhya stated that while she was cooking on stove, the stove was burst and she got burn and her mother extinguished fire and she has no complaint against anybody. There is an endorsement of

Doctor that "patient is conscious and fully oriented" at that time. This fact was supported by P.W.5 Dr.Kiran Patil.

11. However, according to the prosecution, after six days of the incident, i.e. on 12.11.1999 Sandhya expressed her desire to change her statement. Information was given to police. Police came to the hospital. Dr.Patil (PW 5) was present at that time. Before recording her statement, he examined Sandhya and found that Sandhya was conscious, fully oriented and was fit to give statement and, therefore, 2nd statement was recorded in his presence. After recording the statement, impression of her right big toe was taken below her statement and Dr.Patil made endorsement under his signature. He admitted his endorsement at Exhibit 20. Dr.Patil (PW 5) has produced the original papers. In the 2nd statement, Sandhya had stated that on 6.11.1999 her father had gone to Pune for purchasing. Her mother was washing the clothes outside the house. Her brother and sisters were playing outside the house. She was alone in the house. At that time i.e. at 11.30 a.m., the accused came in drunken condition and insisted her that the should go to

their village i.e. Shivur. Sandhya told him that she had come for Diwali celebration and she would not be ready to accompany him. Upon which the accused got annoyed and assaulted her with fist blows on her chest and gave her dirty abuses and set her upon fire. When Sandhya was tried to extinguish fire, the accused brought kerosene can from the kitchen and poured it upon her as a result her body caught fire and the accused went out. Her mother (PW 3) came and extinguished the fire. Then Sandhya also explained that her earlier statement dated 6.11.1999 came to be given because of the threat of her husband i.e. the accused.

12. On the very same day i.e. on 12.11.1999 SEM Sharad Joshi also recorded similar dying declaration. He was examined by the prosecution as P.W.6. Nothing fruitful was brought out from his cross examination.

13. We do not find any reason to discard the second dying declarations or disbelieve them. Admittedly Sandhya was married in May 1998. Her married life was hardly of two years and, looking to the fact that before setting her to fire, the

accused beat her with fist blows on her chest is the circumstances that makes us to believe her story that she was threaten by the accused. Therefore, placing reliance on the second two dying declarations was fully justified.

14. It is true that the witnesses are relatives of Sandhya. But when she had come for Diwali at her parents house and she was burned inside, the presence of those witnesses is not at all unnatural. Therefore, there is no merit in this appeal. The same is required to be dismissed. Hence, We pass the following order :-

:ORDER:

Appeal is dismissed.

Conviction and sentence are upheld.

Office to communicate this order to the Accused who is in jail.

[D.G.DESHPANDE,J]

[SMT.NISHITA MHATRE, J]